

NOW is a privately held Mississippi corporation with its principal offices located in Jackson, Mississippi. NOW is a non-dominant carrier that resells local services and intrastate, interstate, and international long distance service purchased from various facilities-based carriers. NOW is authorized by the FCC to provide international services as a non-dominant carrier and intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in fourteen states. NOW is a certificated

interexchange carrier and local service provider in South Carolina, having obtained certification in Docket No. 98-387-C, Order No. 98-949, dated December 3, 1998.

Tel-Link is a privately held Georgia limited liability company with its principal offices located in Atlanta, Georgia. Tel-Link is a non-dominant carrier that resells local service and intrastate and interstate long distance service purchased from various facilities-based carriers pursuant to the FCC's *Competitive Carrier* policies. Tel-Link is authorized to provide intrastate service, pursuant to certificate, registration, or tariff requirement, or on an unregulated basis in eighteen states. Tel-Link is a certificated interexchange carrier and local service provider in South Carolina having received its certification in Docket No. 97-127-C, Order No. 97-594, dated July 10, 1997.

Applicants propose a transaction which will accomplish the following:

- a. NOW will buy, and Tel-Link will sell, transfer and assign to NOW all of Tel-Link's right, title and interest in Tel-Link's assets, as defined in the Agreement;
- b. In consideration for the above transfer and sale of assets, NOW will pay to Tel-Link the purchase consideration as described in the Agreement; and
- c. The assets to be sold to NOW include Tel-Link's customer accounts, certifications and licenses, to the extent permitted by this Commission.

By letter dated March 13, 2000, the Commission's Executive Director instructed the Applicants to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. The

Applicants filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

MOTION FOR EXPEDITED REVIEW

As part of its Application, the Applicants requested expedited review and disposition of the Application in order that the Applicants could consolidate their respective operations as soon as possible. After the return date expired with no intervention or opposition, the Applicants reiterated their request for expedited review by filing verified testimony to support the Application. Once the Applicants filed verified testimony to support the Application, the matter was brought to the Commission for consideration.

Upon consideration of the Applicants' request for expedited review, the Commission finds that expedited review should be granted. By their request, the Applicants waive their right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that the Applicants make a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY

By the Application, Applicants seek to transfer all of the present customer accounts and related assets of Tel-Link, and NOW will thereafter serve these customers pursuant to NOW's certificate to operate in South Carolina. In support of the Application, Applicants filed the verified testimony of Larry Seab, President of NOW.

According to the Application and the verified testimony of Mr. Seab, NOW is a privately held Mississippi corporation with its principal offices located in Jackson, Mississippi. NOW is a non-dominant carrier that resells local services and intrastate, interstate, and international long distance service purchased from various facilities-based carriers. NOW is authorized by the FCC to provide international services as a non-dominant carrier and intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in fourteen states. NOW is a certificated interexchange carrier and local service provider in South Carolina, having obtained certification in Docket No. 98-387-C, Order No. 98-949, dated December 3, 1998.

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Under the Asset Purchase Agreement, Tel-Link shall sell, transfer, and assign to NOW all of Tel-Link's right, title and interest in and to Tel-Link's assets, including but not limited to inventory, real property leases, customer base, business contracts, security deposits, business books and records, etc. Following consummation of the proposed transaction, NOW will serve all of the present customers of Tel-Link pursuant to NOW's certification in South Carolina.¹ NOW will continue to offer all of the services, at current rates, presently offered by Tel-Link to its customers. Thus after the transfer, the South Carolina customers of Tel-Link will continue to receive their present level of service uninterrupted. Upon review, it appears to the Commission that the transaction will be a seamless one for the customers of Tel-Link that are being transferred to the services of NOW.

The Applicants offer that the proposed transaction will serve the public interest by enhancing the operating efficiencies of NOW. NOW can service the transferred customers in a more efficient manner. NOW may also benefit from the economies of scale and receive discounts on quantity ordering of materials and services, which may allow services to be provided at even more competitive rates in this state for present Tel-Link and NOW customers and for future NOW customers.

Upon review and consideration of the Application, the verified testimony of Mr. Seab, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

¹ The Applicants request that Tel-Link's certification be transferred as part of the asset transfer. However, since NOW holds the same authority as Tel-Link, NOW should serve the transferred customers under its own certificate of authority.

FINDINGS OF FACT

1. NOW is a privately held Mississippi corporation with its principal offices located in Jackson, Mississippi. NOW is a non-dominant carrier that resells local services and intrastate, interstate, and international long distance service purchased from various facilities-based carriers. NOW is authorized by the FCC to provide international services as a non-dominant carrier and intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in fourteen states. NOW is a certificated interexchange carrier and local service provider in South Carolina, having obtained certification in Docket No. 98-387-C, Order No. 98-949, dated December 3, 1998.

2. Tel-Link is a privately held Georgia limited liability company with its principal offices located in Atlanta, Georgia. Tel-Link is a non-dominant carrier that resells local service and intrastate and interstate long distance service purchased from various facilities-based carriers pursuant to the FCC's *Competitive Carrier* policies. Tel-Link is authorized to provide intrastate service, pursuant to certificate, registration, or tariff requirement, or on an unregulated basis in eighteen states. Tel-Link is a certificated interexchange carrier and local service provider in South Carolina having received its certification in Docket No. 97-127-C, Order No. 97-594, dated July 10, 1997.

3. NOW and Tel-Link have entered into an Asset Purchase Agreement whereby Tel-Link has agreed to sell and NOW has agreed to buy certain assets of Tel-Link, including customer accounts. NOW will service these customers pursuant to its

authority granted by the Commission in Docket No. 98-387-C, Order No. 98-949, dated December 3, 1998.

4. As NOW possesses the same operating authority as Tel-Link, the Commission finds that the operating authority of Tel-Link should not be transferred. A transfer of Tel-Link's operating authority would result in NOW holding duplicating authority which is not needed.

5. The Asset Transfer will be a seamless transaction where the customers subject to the transfer will not experience any change in rates.

6. The transaction should produce economic efficiencies in operations and marketing and other benefits of size and scale which will hopefully produce tangible benefits for the customers of NOW.

CONCLUSIONS OF LAW

1. NOW is experienced in providing telecommunications services and desires to expand its operations in South Carolina and elsewhere.

2. Based on the above Findings of Fact, the Commission hereby determines that the Application filed by NOW and Tel-Link requesting Commission approval of a proposed Asset Purchase Agreement will not adversely affect the public interest, and therefore, the Commission approves the requested Asset Purchase Agreement, except that the Commission does not approve the request to transfer Tel-Link's authority to operate in South Carolina as granted in Docket No. 97-127-C, Order No. 97-594, dated July 10, 1997, to NOW.

3. The Commission does not approve transfer of Tel-Link's authority to operate in South Carolina as granted in Docket No. 97-127-C, Order No. 97-594, dated July 10, 1997. As Tel-Link sought to transfer its operating authority in South Carolina to NOW as part of the transaction herein, Tel-Link's authority to operate in South Carolina as granted in Docket No. 97-127-C, Order No. 97-594, dated July 10, 1997, is hereby cancelled.

IT IS THEREFORE ORDERED THAT:

1. The Application of NOW and Tel-Link for approval of an Asset Purchase Agreement is hereby approved as stated herein.
2. NOW will amend its tariffs to include any rates to the extent that any present Tel-Link rates are not included in NOW's tariffs on file with the Commission.
3. NOW will notify all affected customers of the transaction. Notification may be made by bill insert. NOW shall provide proof, including a sample of the notification, to the Commission after notification has been completed.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)